

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

WILLIAM JAY CLARK, #01406058

§

VS.

§

CIVIL ACTION NO. 4:10cv236

DIRECTOR, TDCJ-CID

§

MEMORANDUM OPINION AND ORDER

Petitioner filed a motion for certificate of appealability (docket entry #46) in his appeal from this Court's denial and dismissal of his petition for habeas corpus.

A petitioner must obtain a certificate of appealability before he can appeal a district court's decision. 28 U.S.C. § 2253(c)(1). A certificate of appealability may issue only if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The Supreme Court fully explained the requirement associated with a "substantial showing of the denial of a constitutional right" in *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604, 146 L. Ed.2d 542 (2000). In cases where a district court rejects a petitioner's constitutional claims on the merits, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.*; *Henry v. Cockrell*, 327 F.3d 429, 431 (5th Cir. 2003). "When a district court denies a habeas petition on procedural grounds without reaching the petitioner's underlying constitutional claim, a COA should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* The Supreme Court has held that a certificate

of appealability is a “jurisdictional prerequisite” and a court of appeals lacks jurisdiction to rule on the merits until a certificate of appealability has been issued. *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S. Ct. 1029, 1039, 154 L. Ed.2d 931 (2003).

Petitioner’s petition was dismissed because his issues were found to be without merit. He has not shown that the decision dismissing his writ was wrong. He has not shown that jurists of reason would find the assessment of his claims debatable. In conclusion, he simply has not made a substantial showing of the denial of a constitutional right. He is not entitled to a certificate of appealability.

Petitioner also files a motion for Traverse (docket entry #47). At this juncture, the motion is unnecessary and moot. It is accordingly

ORDERED that the motion for a certificate of appealability (docket entry #46) is **DENIED**.

It is also

ORDERED that the motion for Traverse (docket entry #47) is **DENIED**. All motions not previously ruled upon are **DENIED**. Petitioner should submit all future motions to the Fifth Circuit as opposed to this Court.

So **ORDERED** and **SIGNED** this **21** day of **March, 2014**.



Ron Clark, United States District Judge